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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,536	10/14/2005	Wolfgang Rohde	LU 6035 (US)	9276
34872	7590	07/08/2008		
Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803			EXAMINER GOFF II, JOHN L	
			ART UNIT	PAPER NUMBER
			1791	
			MAIL DATE	DELIVERY MODE
			07/08/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,536	<b>Applicant(s)</b> ROHDE ET AL.	
	<b>Examiner</b> John L. Goff	<b>Art Unit</b> 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/7/05, 4/14/08</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-19 and 22-26, in the reply filed on 4/7/08 is acknowledged. The traversal is on the ground(s) that "Applicants respectfully submit that DE 100 10 900 does not teach or disclose a removable intermediate frame that separates the mold halves from one another, so that the statutory requirements under 102 are not met.

Applicants respectfully request reconsideration and withdrawal of the restriction requirement, and that all of the claims pending in this application be examined." This is not found persuasive because claims 20 and 21 are directed to a hollow plastic article wherein the intermediate frame is not part of the structure of the finished article rather the intermediate frame is part of the process of making the article, and as noted in MPEP 2113 "Once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product.". Applicants have not shown an unobvious difference between the claimed product and the prior art product as the intermediate frame is not part of the claimed product.

The requirement is still deemed proper and is therefore made FINAL.

***Information Disclosure Statement***

2. The information disclosure statement filed 4/7/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The documents without an attached copy have been lined through.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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5. Claims 1-9, 12-19, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadr (U.S. Patent Application Publication 2002/0105115) in view of Schaftingen et al. (U.S. Patent Application Publication 2001/0015513) or the admitted prior art (Specification pages 3-4 and in particular DE 10042121 wherein U.S. Patent 6,893,603 is also applied as a translation).

Sadr discloses a process for producing hollow plastic articles such as a fuel tank comprising producing a tubular plastic parison by means of extrusion or coextrusion, cutting open the tubular plastic parison to produce two planar-surface parts, molding by thermoforming or blow molding the planar-surface parts in two mold halves to give half shells wherein a removable intermediate frame separates the mold halves from one another at least along peripheral edges wherein the planar-surface parts and half shells are not in contact with each other, opening the mold halves and removing the intermediate frame, and bonding by welding the half shells along a peripheral rim (Figures 1-10 and Paragraphs 0004, 0009, 0023, 0026, 0032, 0034, 0036, and 0037). Sadr does not specifically teach bonding by closing the mold halves. Schaftingen discloses a process for producing hollow plastic articles such as a fuel tank comprising producing a tubular plastic parison by means of extrusion or coextrusion, cutting open the tubular plastic parison to produce two planar-surface parts, molding by blow molding the planar-surface parts in two mold halves to give half shells and bonding by welding the half shells along a peripheral rim using closed mold halves (the Figure and Paragraphs 0019 and 0021). The admitted prior art discloses a process for producing hollow plastic articles such as a fuel tank comprising producing a tubular plastic parison by means of extrusion or coextrusion, cutting open the tubular plastic parison to produce two planar-surface parts, molding by thermoforming the planar-surface parts in two mold halves to give half shells, opening the mold

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halves, closing the mold halves wherein the half shells come into contact with one another along a peripheral rim, and bonding the half shells (Page 3, line 21-Page 4, line 10 of the Specification and Column 7, lines 4-64 of '603). It would have been obvious to one of ordinary skill in the art at the time the invention was made to bond the half shells as taught by Sadr by simply closing the mold halves as was the known simple technique as shown by Schaftingen or the admitted prior art.

Regarding claims 2 and 3, Sadr appears to teach that after removal of the intermediate frame that parts such as fuel lines, pumps, sensors, etc. are attached to the inside of at least one of the molded half shells (Paragraphs 0004 and 0006). In the event it is considered Sadr does not necessarily suggest incorporating these parts the following rejection would apply. Schaftingen (Paragraph 0032) and the admitted prior art (Column 7, lines 42-64 of '063) are evidence it was known to attach fuel tank parts such as those claimed to at least one of the molded half shells before bonding the half shells. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in Sadr a step of attaching fuel tank parts to at least one of the molded half shells after opening the mold halves and removal of the intermediate frame as such parts were known to be attached prior to bonding the half shells as shown by Schaftingen or the admitted prior art to form a functional fuel tank.

Regarding claims 6 and 13, the process taught by Sadr as modified by Schaftingen or the admitted prior art uses heat from molding to weld the half shells without additional heating or cooling steps.

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Regarding claim 7, it is considered that the shaping of the bond line into a particular geometry by the closed mold halves such as specified by the admitted prior art (Column 7, lines 56-64 of '063) after initial bonding of the half shells is further molding by thermoforming.

Regarding claims 8 and 9, the intermediate frame taught by Sadr is of single-part or multipart design and comprises a plate insert which substantially provides complete filling of an area between the two mold halves wherein the frame comprises equipment for blowing air considered equipment for either cooling or heating (Figure 5).

Regarding claims 14, 19, and 23 Sadr does not teach including driven units of a floating roller type. However, it was known to include such for guiding the parison over the cutting device as shown by Schaftingen (the Figure and Paragraphs 0030 and 0046). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in Sadr driven units of a floating roller type for guiding the parison over the cutting device as shown by Schaftingen.

Regarding claim 15, Sadr cuts the tubular plastic parison before the extrusion process is complete.

Regarding claims 16-18 and 24-26, Sadr is not limited to any plastic parison and specifically suggest at least one or two polymeric layers one of which may be a barrier layer (Paragraph 0036). Schaftingen (Paragraphs 0014 and 0015) and the admitted prior art (Column 5, lines 10-67 of '063) are exemplary of extruding a parison for a fuel tank having the particular layers of claims 16-18 and 24-26 which tank has a leakproof nature and mechanical stability. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use as the parison taught by Sadr one formed of layers known to form a fuel tank having a

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leakproof nature and mechanical stability such as that shown by Schaftingen or the admitted prior art.

6. Claims 9, 10, 11, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadr and Schaftingen or the admitted prior art as applied to claims 1-9, 12-19, and 23-26 above, and further in view of Shuman (U.S. Patent 4,170,449).

Sadr and Schaftingen or the admitted prior art as applied above teach all of the limitations in claims 9, 10, 11, and 22 except for a specific teaching that the intermediate frame includes equipment for controlled heating of the edges of the molded half shells and the pinch-off edge of the half molds, it being noted the intermediate frame taught by Sadr clamps the edge of the planar-surface parts to the pinch-off edge of the half molds during thermoforming. It is well taken in the art of thermoforming of a planar-surface part using a frame that the frame includes equipment for controlled heating of the frame to prevent edges of the planar-surface part which are clamped from cooling and distorting during thermoforming as shown by Shuman (Column 1, lines 19-64 and Column 2, lines 16-21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include in the intermediate frame taught by Sadr as modified by Schaftingen or the admitted prior art equipment for controlled heating of the frame as is well taken in the art as shown by Shuman to prevent edges of the planar-surface part from distorting during thermoforming.



### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-9, 12, 13, 15-18, 24, and 25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,893,603 in view of Sadr. Claims 1-18 of U.S. Patent No. 6,893,603 fully encompass claims 1-9, 12, 13, 15-18, and 24-26 of the instant application except for a specific teaching of thermoforming using mold halves and an intermediate frame of which an obvious known suitable thermoforming technique for a similar/same product is disclosed by Sadr more fully described above.

9. Claims 10, 11, and 22 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,893,603 and Sadr as applied above, and further in view of Shuman. Claims 1-18 of U.S. Patent No. 6,893,603 and Sadr fully encompass claims 10, 11, and 22 of the instant application except for a specific

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teaching that the intermediate frame includes equipment for controlled heating of the edges of the molded half shells and the pinch-off edge of the half molds which is obvious in view of Shuman as set forth above.

10. Claims 19, 23, and 26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,893,603 and Sadr as applied above, and further in view of Schaftingen. Claims 1-18 of U.S. Patent No. 6,893,603 and Sadr fully encompass claims 19, 23, and 26 of the instant application except for a specific teaching of including driven units of a floating roller type which is obvious in view of Schaftingen as set forth above.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is **(571) 272-1216**. The examiner can normally be reached on M-F (7:15 AM - 3:45 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John L. Goff/  
Primary Examiner, Art Unit 1791